

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

JACQUELINE HUGHES,

Appellant,

v.

DEPARTMENT OF SOCIAL AND HEALTH
SERVICES,

Respondent.

) Case No. DISM-03-0064

)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, GERALD L. MORGEN, Vice Chair, and BUSSE NUTLEY, Member. The hearing was held at Eastern State Hospital, South Conference Room, Main Building, Medical Lake, Washington, on August 10 and 11, 2004.

1.2 **Appearances.** Appellant Jacqueline Hughes was present and was represented by Edward Earl Younglove III, Attorney at Law, of Parr, Younglove, Lyman & Coker, P.L.L.C. Patricia Thompson, Assistant Attorney General, represented Respondent Department of Social and Health Services.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for neglect of duty, gross misconduct and willful violation of agency policies. Respondent alleged that Appellant violated patient confidentiality rights when she shared information about a patient with others and shared personal information about her daughter with the patient.

II. FINDINGS OF FACT

2.1 Appellant Jacqueline Hughes was a permanent employee for Respondent Department of Social and Health Services. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on July 23, 2003.

2.2 Appellant was a Psychiatric Security Attendant in the Forensic Unit. By letter dated June 13, 2003, Hal Wilson, Chief Executive Officer of Eastern State Hospital, notified Appellant of her dismissal, effective June 30, 2003. Mr. Wilson charged Appellant with neglect of duty, gross misconduct and willful violation of agency policy. Mr. Wilson specifically alleged that Appellant:

- 1) divulged confidential medical and personal information about patient Kathy M. to her daughter, Carrie, and Kathy's boyfriend, Ron;
- 2) discussed her daughter Carrie's personal problems with patient Kathy M.;
- 3) went to the home of patient Kathy M.;
- 4) intimidated patient Kathy M. on February 26, 2003 by telling her not to say anything about their conversations or she would lose her job.

2.3 Appellant began her employment with DSHS in 1981 at Lakeland Village. Appellant has no previous formal disciplines of any type; however, her supervisor counseled her on several occasions regarding attendance issues.

2.4 Kathy M. was a patient who voluntarily admitted herself to the Adult Psychiatric Unit at Eastern State Hospital in November 2002. In February 2003, Appellant was acting as a "floater." Debbie Lillquist, Nurse Manager 4, assigned Appellant to work "one-on-one" with Kathy M., who was on suicide watch. At the time, Kathy M. was on approximately 10 different medications,

1 including medications for anxiety and depression. Appellant worked with Kathy on three occasions
2 in February 2003, including the evening of February 25 through early morning of February 26. On
3 this occasion, Appellant observed Kathy from 11 p.m. to 1 a.m., and Appellant's progress notes
4 reflected that she and Kathy engaged in conversation. Appellant also conducted a one-on-one
5 observation of Kathy from 3 a.m. to 4 a.m. and from 6 a.m. to 7 a.m.

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7 2.5 At 2 p.m. on February 26, Kathy M. met with Dr. Pat Gunderson, Psychologist, for a
8 counseling session. Kathy alleged that a staff person had divulged confidential patient information
9 about her to others. Kathy would not tell Dr. Gunderson the staff person's name but claimed that
10 the staff person asked her not to tell others about their conversation or she (the staff person) would
11 lose her job.

12
13 2.6 On February 27, Dr. Gunderson talked to Kathy again, and Kathy revealed that the staff
14 person was named "Jackie," who normally worked in the Forensic Unit. Kathy claimed her
15 conversation with Appellant occurred around midnight and that Appellant told her that she had read
16 her (Kathy's) chart, that she had been to Kathy's boyfriend's house (Ron), that she bought drugs
17 from Ron and that she had a problem with "meth." Kathy also claimed that on the evening of
18 February 26, she spoke with her boyfriend Ron, and that Ron told her he had spoken with Jackie,
19 that Jackie told him that she had read Kathy's chart, and that he now knew that she was on suicide
20 watch and knew personal information about her past. Kathy claimed that this was information she
21 did not want Ron to know and that she was upset and fearful of retribution from Appellant and from
22 Appellant's daughter, Carrie, who was living in the basement of her boyfriend Ron's house.

23
24 2.7 The department initiated a Conduct Investigation Report against Appellant, and Ms.
25 Lillquist conducted an initial interview with Appellant. Appellant admitted she acknowledged to
26 Kathy that she had a daughter named was Carrie after Kathy asked if she had a daughter named

1 Carrie. Appellant also admitted to Ms. Lillquist that she had confirmed to her daughter, Carrie, that
2 Kathy was a patient at the hospital.

3
4 2.8 In making a determination regarding the charges here, we have reviewed the investigative
5 reports written by the department after interviews with Appellant and Kathy. These investigative
6 reports do not reflect that Ron R. was contacted or interviewed by the department. We have also
7 weighed the testimony presented to us, including the testimony of Appellant, Kathy M. and Ron R.
8 who were the only individuals with any personal knowledge regarding the events.

9
10 2.9 We find that neither Kathy M. nor Ron R. are credible witnesses. First, Kathy's testimony
11 before contradicted previous statements she gave when interviewed by the department. One notable
12 contradiction is that during her interview with Debbie Lillquist, Kathy stated that she had seen
13 Appellant's daughter, Carrie, on "meth" and that she was very dangerous. However, in her
14 testimony before us, Kathy testified that she had never met Carrie.

15
16 2.10 Second, Ron R., who is currently incarcerated on drug charges, testified that in February
17 2003, he was regularly making, selling and using illegal drugs, including methamphetamines. Ron
18 R. testified that he received information from Appellant regarding Kathy M. in "exchange for
19 drugs," and that he and Appellant were both "doing meth at the time" the information exchange
20 took place. Although Ron R. claimed that Appellant divulged personal information to him about
21 Kathy M., we were not presented with a preponderance of credible evidence to support that
22 Appellant shared this information with him.

23
24 2.11 Appellant denies that she shared confidential information with Ron R. However, she admits
25 that on February 19, 2003, she went to pick up her daughter, who was living in the basement of Ron
26

1 R.'s home. On that occasion, Appellant was introduced to Ron, who was standing on the porch of
2 the house.

3
4 2.12 Respondent has adopted Eastern State Hospital Policy 1.21 entitled Staff-Patient
5 Relationships. In pertinent part, Section IV informs staff that patient information is confidential
6 and warns employees that they may "not discuss patients by name or other identifying information
7 unless the discussion is work related and then only in a confidential setting." The policy also
8 prohibits discussing a staff's personal with the patient.

9
10 2.13 Hal Wilson was Appellant's appointing authority when the discipline was imposed. Mr.
11 Wilson was contemplating termination, and he met with Appellant on two occasions, including on
12 June 12, 2004. During this meeting, Appellant denied breaching patient confidentiality. After
13 considering Appellant's response to the charges, Mr. Wilson did not find that she presented any
14 information to convince him that she did not engage in the alleged misconduct nor did she present
15 him with any fact that mitigated her behavior.

16
17 2.14 Mr. Wilson concluded that Appellant violated patient confidentiality and engaged in patient
18 abuse by sharing patient information with others. He further concluded that Appellant engaged in a
19 non-therapeutic relationship with Kathy. Mr. Wilson concluded that Appellant violated the mission
20 of the hospital when she divulged patient confidentiality and patient privacy. In determining the
21 level of discipline, reviewed Appellant's performance evaluations, but found that her misconduct
22 was serious and warranted dismissal.

23 24 **III. ARGUMENTS OF THE PARTIES**

25 3.1 Respondent argues that the evidence supports that Appellant violated patient confidentiality
26 when she discussed Kathy M.'s hospitalization and personal history with Ron R. and with her

1 daughter Carrie. Respondent also asserts that Appellant violated policy when she discussed
2 personal information about herself and her daughter with patient Kathy M. Respondent asserts that
3 the evidence also supports that Appellant entered the home of Kathy. Respondent argues that
4 Appellant has not been consistent, that the appointing authority could no longer trust her and that
5 dismissal was the appropriate sanction.

6
7 3.2 Appellant argues that Respondent has failed to provide good, credible and reliable evidence
8 to support the allegations. Appellant denies that she violated patient confidentiality or shared
9 patient information about Kathy with others. Appellant also denies having ever entered Kathy's
10 home, and she denies that she threatened Kathy. Appellant asserts that the testimony of Kathy and
11 Ron R. is not credible, while her own testimony has been consistent.

12 13 **IV. CONCLUSIONS OF LAW**

14 4.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.
15

16 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
17 the charges upon which the action was initiated by proving by a preponderance of the credible
18 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
19 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of
20 Corrections, PAB No. D82-084 (1983).

21
22 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
23 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
24 of Social & Health Services, PAB No. D86-119 (1987).
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26

1 4.4 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to
2 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989). Flagrant
3 misbehavior occurs when an employee evinces willful or wanton disregard of his/her employer's
4 interest or standards of expected behavior. Harper v. WSU, PAB No. RULE-00-0040 (2002).

5
6 4.5 Willful violation of published employing agency or institution or Personnel Resources
7 Board rules or regulations is established by facts showing the existence and publication of the rules
8 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the
9 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

10
11 4.6 Respondent has failed to prove by a preponderance of credible evidence that Appellant
12 divulged confidential medical and personal information to Ron R. or her daughter Carrie, that she
13 discussed her daughter's problems with Kathy M., or that she told Kathy M. not to tell others about
14 their alleged conversations. Furthermore, under the circumstances of Appellant's visit to Kathy's
15 home, there was no neglect of duty or violation of policy because Appellant went there to pick up
16 her daughter and not to visit a patient's home.

17
18 4.7 Respondent has proven by a preponderance of the credible evidence that Appellant's
19 acknowledgement to her daughter that Kathy was a patient at Eastern State Hospital was a violation
20 of agency policy and a neglect of her duty to ensure that Kathy's identity as a patient of Eastern
21 State Hospital remain confidential. This breach of patient confidentiality rises to the level of gross
22 misconduct because it interferes with the hospital's mission to insure patient confidentiality.
23 Respondent has also proven that Appellant neglected her duty and violated agency policy when she
24 acknowledged to Kathy M. that Carrie was her daughter.

1 4.8 In determining whether a sanction imposed is appropriate, consideration must be given to
2 the facts and circumstances, including the seriousness and circumstances of the offenses. The
3 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to
4 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the
5 program. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

6
7 4.9 Under the proven facts, we conclude that dismissal is too severe and find that a six-month
8 suspension is sufficient to impress upon Appellant the importance of maintaining patient
9 confidentiality and privacy rights.

10
11 **V. ORDER**

12 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Jacqueline Hughes is modified
13 to a six-month suspension.

14
15 DATED this _____ day of _____, 2004.

16
17 WASHINGTON STATE PERSONNEL APPEALS BOARD

18
19 _____
20 Gerald L. Morgen, Vice Chair

21 _____
22 Busse Nutley, Member